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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,621	03/12/2001	Serge Willenegger	QCPA363DIVC1	3167
23696	7590	08/23/2005	EXAMINER	
Qualcomm Incorporated Patents Department 5775 Morehouse Drive San Diego, CA 92121-1714			WILSON, ROBERT W	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/804,621

Applicant(s)

WILLENEGGER ET AL.

Examiner

Robert W. Wilson

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7,9-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7,9-14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 7, 9-14, & 16-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9-13 of U.S. Patent No. 5,991,284.

Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Referring to claim 7, claims 1 of U.S. Patent No. 5,991,284 teach: A wireless communication system with a remote station that transmits reverse link signal comprising of subchannels. The reference also teaches that the base station generates power control messages based upon quality measurements. Claim 9 of U.S. Patent No. 5,991,284 teaches a comparator that compares frame error rate with a threshold or signal quality.

Claims 1 & 9 do not expressly call for: independently adjusting transmission power to subchannels but teaches sending reverse link signals on subchannels.

It would have been obvious to one of ordinary skill in the art at the time of the invention to independently adjust the transmission power on the subchannels in order to minimize interference between subchannels. The additional limitations taught would have been obvious.

In addition:

Regarding claim 9, The applicant has broadly claimed "data type". The examiner takes official notice that it is well known in the art that frame errors rate varies with data type on a channel. It would have been obvious to one of ordinary skill in the art at the time of the invention that frame error on a subchannel would vary based upon data type because a subchannel subset of a channel.

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Regarding claim 10, claim 11 of U.S. Patent No. 5,991,284 teaches threshold generator.

Regarding claim 11, claim 12 of U.S. Patent No. 5,991,284 teaches plurality of bits.

Regarding claim 12, claim 13 of U.S. Patent No. 5,991,284 teaches gain values

Regarding claim 13, claims 10 of U.S. Patent No. 5,991,284 teaches decoders.

Referring to claim 14, claims 1 of U.S. Patent No. 5,991,284 teach: The applicant broadly claims "data type". The reference teaches a wireless communication system which performs the method. The wireless communication system has a remote station that transmits reverse link signal comprising of subchannels. The base station generates a message to control power adjustments in accordance with data or data type communicated. Claim 9 of U.S. Patent No. 5,991,284 teaches a comparator that compares frame error rate with a threshold or signal quality.

Claims 1 & 9 do not expressly call for: independently adjusting transmission power to subchannels but teaches sending reverse link signals on subchannels.

It would have been obvious to one of ordinary skill in the art at the time of the invention to independently adjust the transmission power on the subchannels in order to minimize interference between subchannels. The additional limitations taught would have been obvious.

In addition:

Regarding claim 16, The applicant has broadly claimed "data type". The examiner takes official notice that it is well known in the art that frame errors rate varies with data type on a channel. It would have been obvious to one of ordinary skill in the art at the time of the invention that frame error on a subchannel would vary based upon data type because a subchannel subset of a channel.

Regarding claim 17, claim 11 of U.S. Patent No. 5,991,284 teaches threshold generator.

Regarding claim 18, claim 12 of U.S. Patent No. 5,991,284 teaches plurality of bits.

Regarding claim 19, claim 13 of U.S. Patent No. 5,991,284 teaches gain values

Regarding claim 20, claims 10 of U.S. Patent No. 5,991,284 teaches decoders.

### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Wilson whose telephone number is 571/272-3075.

The examiner can normally be reached on M-F (8:00-4:30).

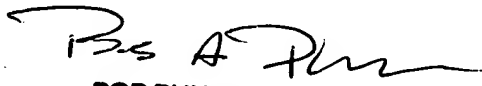
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 571/272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571/273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert W Wilson  
Examiner  
Art Unit 2661



RWW  
8/18/05

**BOB PHUNKULH**  
**PRIMARY EXAMINER**